UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

FINDING OF NO SIGNIFICANT IMPACT FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO FAIRWEATHER, INC. TO TAKE MARINE MAMMALS BY HARASSMENT INCIDENTAL TO CONDUCTING ANCHOR RETRIEVAL ACTIVITY IN THE BEAUFORT AND CHUKCHI SEAS

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

On February 2, 2016, the National Marine Fisheries Service (NMFS) received an application from Fairweather, LLC (Fairweather), for the taking of marine mammals incidental to conducting anchor retrieval activities in the U.S. Chukchi and Beaufort seas. After receiving NMFS comments, Fairweather made revisions and updated its Incidental Harassment Authorization (IHA) application and marine mammal mitigation and monitoring plan on February 8, 2016.

In response to receipt of the request from Fairweather, NMFS proposed to issue an IHA that authorized takes, by Level B harassment, of small numbers of marine mammals, pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). Pursuant to the MMPA, authorization for incidental taking shall be granted provided that NMFS: (1) determines that the action would have a negligible impact on the affected species or stocks of marine mammals; (2) finds the action would not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals for taking for subsistence uses; and (3) sets forth, where applicable, the permissible methods of taking, other means of effecting the least practicable impact on affected species and stocks and their habitat, and requirements pertaining to the mitigation, monitoring, and reporting of such takes.

NMFS prepared a draft environmental assessment (draft EA), along with a *Federal Register* notice (80 FR 11398; March 3, 2015) for the proposed IHA for public comment on the potential environmental impacts of our issuance of an IHA. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission); the Alaska Eskimo Whaling Commission (AEWC); Fairweather; and a private citizen. All comments will be addressed in the *Federal Register* notice announcing our final decision on the proposed issuance of the IHA.

In accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321 *et seq.*), NMFS prepared an Environmental Assessment (EA) titled, "*Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals by Harassment Incidental to Anchor Retrieval Activities in the Chukchi and Beaufort Seas*" (hereinafter, the EA). Based on the EA, NMFS proposed to issue the IHA to Fairweather with the initially proposed mitigation measures, as described in Alternative 1 of the EA.

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The analyses in the EA, which is hereby incorporated by reference, support the analysis and determination below, and based on these, NMFS proposes to issue the IHA to Fairweather with the proposed mitigation measures, as described in Alternative 1 to the EA.

ANALYSIS

The Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on CEQ's context and intensity criteria. These include:

1) **Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?**

   Response: The proposed action (i.e., issuing an IHA to Fairweather as described in Alternative 1 of the EA) is not reasonably expected to cause substantial damage to the ocean or coastal habitats or essential fish habitat (EFH). The underlying action of Fairweather's anchor retrieval operation will involve retrieving anchors left by Shell, Inc. in the action area. The noises from the vessels' dynamic positioning thruster and anchor handling are of low intensity compared to other intense sound sources such as military sonar and marine seismic airguns, and are not expected to injure fish species in the action area.

2) **Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

   Response: The proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem functions in the vicinity of the proposed anchor retrieval areas in the Chukchi and Beaufort seas because NMFS does not expect the issuance of the IHA to Fairweather or the underlying action to significantly (1) affect the susceptibility of any of the animals found in the vicinity of the project area to predation, (2) alter dietary preferences or foraging behavior, (3) change distribution or abundance of predators or prey, or (4) significantly disturb marine mammal behavior.

   The impacts of the underlying action on marine mammals are limited to temporary disturbance of marine mammals in the operation area from being exposed to operating vessels' dynamic positioning thruster noise and anchor handling activity. Neither serious injury nor mortality of marine mammals is anticipated and will not be authorized. These disturbances are not expected to result in substantial impacts to marine mammals or to their role in the ecosystem.

3) **Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?**

   Response: The proposed action is not reasonably expected to have a substantial adverse impact on public health or safety because neither issuance of the IHA nor the underlying authorized activity poses a risk to public health or human safety. The taking of marine mammals poses no risk to public health or safety. The anchor retrieval in the ocean bottom is part of routine activities that are performed by industry worldwide on a regular basis.

4) **Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?**

Response: The proposed action is not reasonably expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. The IHA will not authorize injury or mortality of marine mammals. The IHA will authorize some Level B harassments of small numbers of marine mammals incidental to Fairweather's anchor retrieval program, but NMFS Office of Protected Resources has determined that the take of marine mammals incidental to the anchor retrieval would have a negligible impact on the species and stocks of marine mammals in the action area.

Further, NMFS Office of Protected Resources engaged in formal consultation with NMFS Alaska Regional Office in 2016 regarding potential impacts of issuance of the IHA on threatened and endangered species. In a biological opinion dated June 20, 2016, NMFS Alaska Regional Office concluded that the issuance of the IHA is: (1) not likely to jeopardize the continued existence of the Endangered Species Act-listed ringed marine mammals; and (2) not likely to adversely modify or destroy critical habitat, as the proposed anchor retrieval areas are neither within nor nearby designated critical habitat for ESA-listed species.

5) **Are significant social or economic impacts interrelated with natural or physical environmental effects?**

Response: NMFS does not expect the issuance of an IHA to Fairweather to result in significant social or economic impacts interrelated with natural or physical environmental effects. Natural or physical effects of the anchor retrieval in the Chukchi and Beaufort seas would be limited to short-term and geographically-limited disturbance and the short-term harassment of marine mammals, as authorized by the permit. Authorization of the proposed anchor retrieval could result in a low level of economic benefit to the local economy, through employment opportunities and revenue. However, such impacts would likely be negligible and on a regional or local level.

Because of the limited nature of the survey, the activities authorized would not substantially impact use of the environment or use of natural or depletable resources, such as might be expected from large-scale oil and gas development or resource extraction activities. Further, issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

NMFS has determined that issuance of the IHA will not adversely affect low-income or minority populations or subsistence uses of marine mammals. There are subsistence uses of marine mammals in or near the action area, but there will be no unmitigable adverse impact resulting from the activity on the availability of the species or stocks of marine mammals for subsistence uses, as necessary mitigation measures would be implemented to eliminate any impacts that could have significant effects on the subsistence use of such resources. Furthermore, the proposed anchor retrieval activity would be conducted outside of the time when most subsistence hunting takes place. In addition, Fairweather has worked with, and will continue to work with, the native communities to further mitigate potential impacts to subsistence use of marine mammal resources. Fairweather has prepared a Plan of Cooperation (POC) that identifies and documents potential conflicts and associated measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence use. With all of these measures in place, no

significant social or economic impacts are expected as a result of the issuance of the IHA or the underlying activity.

6) **Are the effects on the quality of the human environment likely to be highly controversial?**

Response: The effects of issuing an IHA to Fairweather as described in Alternative 1 of the EA on the quality of the human environment are not likely to be highly controversial because: (1) there is no substantial dispute regarding the size, nature, or effect of the proposed action; and (2) there is no known scientific controversy over the potential impacts of the proposed action.

To allow other agencies and the public the opportunity to review and comment on the actions, NMFS published a notice of receipt of the Fairweather application and proposed IHA in the *Federal Register* on May 19, 2016 (81 FR 31594). This included notice of availability of and 30-day comment period on a draft EA, NMFS received comment letters from the Commission, AEWC, Fairweather, and a private citizen. None of the Commission and AEWC's comments indicated that the potential effects of the proposed action are controversial. All comments will be addressed in the *Federal Register* notice for the issuance of the IHA.

7) **Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?**

Response: The proposed action is not reasonably expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas, because none of these are found in the project area. In addition, as described in the response to questions 1 and 4 above, no substantial impacts to EFH, designated critical habitat, or ecologically critical areas would be expected, as the proposed anchor retrieval program would have a limited footprint for a short duration.

8) **Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?**

Response: The action of issuing an IHA to Fairweather for the incidental take, by Level B harassments, of small numbers of marine mammals from anchor retrieval operation is not expected to have effects on the human environment that would be highly uncertain or involve unique or unknown risks. Similar anchor retrieval activities have been performed routinely and without incidence worldwide. There is nothing unique about Fairweather's action that would create effects on the human environment that would be highly uncertain or involve unique or unknown risks.

While NMFS' judgments on impact thresholds for marine mammals in the vicinity of the project area are based on limited data, the risks are known and would involve the temporary harassment of marine mammals. No deaths or injuries to animals have been documented due to past anchor retrieval operations. The most common response to noise from dynamic positioning thruster is temporary avoidance of the action area. NMFS expects Fairweather's activities to result in the same responses as other vessels operating dynamic positioning thrusters and anchor handling, as there is nothing unique about Fairweather's action that would be expected to create uncertainty or unique or unknown risks.

9) **Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?**

Response: The proposed action to issue an IHA to Fairweather and the underlying action of Fairweather's anchor retrieval are not related to other actions with individually insignificant, but cumulatively significant impacts. As analyzed in the EA, while other activities in the Beaufort and Chukchi seas, including subsistence hunting, marine seismic survey activities, other oil and gas exploration activities, and vessel traffic, are expected to result in impacts on the environment, including limited harassment of marine mammals, none of these activities are related to Fairweather's surveys, and the addition of Fairweather's action is not expected to individually or cumulatively cause any significant impacts.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources?

Response: The issuance of an IHA is not expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources, because such resources do not exist within the areas in the Chukchi and Beaufort seas where Fairweather's proposed anchor retrieval program is planned.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The issuance of an IHA to Fairweather and the underlying action are not reasonably expected to lead to the introduction or spread of any non-indigenous species into the environment, because the activities associated with the proposed project would only involve anchor handling operations. There work does not involve transporting living organisms.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: The issuance of an IHA to Fairweather is not expected to set a precedent for future actions with significant effects nor represent a decision in principle regarding future considerations. To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of an IHA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize future activities by that individual or organization or authorize others to conduct similar activities. Subsequent requests for incidental take authorizations would be evaluated upon their own merits, relative to the criteria established in the MMPA, ESA, and NMFS implementing regulations, on a case-by-case basis. Moreover, Fairweather's proposed anchor retrieval program has no unique aspect that would suggest it would be a precedent for any future actions. For these reasons, the issuance of an IHA to Fairweather to conduct the anchor retrieval is not precedent setting and does not represent a decision in principle about any future considerations.

13) Can the proposed action reasonably be expected to violate any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: The issuance of an IHA would not violate any federal, state, or local laws for environmental protection. NMFS has fulfilled its section 7 responsibilities under the ESA (see response to Question 4).

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: Based on our analysis in the EA, the issuance of an IHA is not expected to result in any significant cumulative adverse effects that could have a substantial effect on target or non-target species. The stresses resulting from the anchor retrieval in the Chukchi and Beaufort seas will be minor, incremental, and temporary, and will have a limited geographic footprint, and thus the effects would be expected to be minimal, when considered separately and cumulatively, when added to other stresses experienced in the vicinity of the action area.

Fairweather's proposed anchor retrievals do not target any species. The proposed operation is expected to result in only short-term behavioral changes, but not long-term displacement or other impacts, to small numbers of marine mammals in the vicinity of the action area. In addition, the mitigation measures Fairweather is required to implement will further reduce any potential impacts to marine mammals. While the marine mammals in the vicinity of Fairweather's anchor retrieval area have the potential to be impacted by other human activities in the Arctic Ocean, as described in the cumulative impacts analysis in the EA, these activities are generally separated both geographically and temporally from Fairweather's proposed anchor retrieval operation. Any short-term disturbances experienced by the marine mammals in the vicinity of Fairweather's anchor retrieval area would be expected to be minimal, when considered separately and cumulatively, when added to other stresses experienced by the marine mammals in the vicinity of the action area. Thus, NMFS concluded that the impacts of issuing an IHA to Fairweather for the incidental take, by Level B harassments only, of small numbers of marine mammals are expected to be no more than minor and short-term, and the proposed action is not expected to result in any cumulative adverse effects on any species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Final Environmental Assessment titled, "*Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals by Harassment Incidental to Anchor Retrieval Activities in the Chukchi and Beaufort Sea,*" prepared by NMFS, it is hereby determined that the issuance of an IHA for the take, by Level B harassments only, of small numbers of marine mammals incidental to Fairweather's proposed anchor retrieval program in the Chukchi and Beaufort seas in 2016, will not significantly impact the quality of the human environment, as described in this document and in the EA.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

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JUN 30 2016

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Date